

**REMARKS**

Claims 1-5, 8-26, 28, 30-34 and 36-39 are currently pending. Claims 6, 7, 27, 29, 35 and 40 are canceled without prejudice or disclaimer. Claims 12-21 and 26 are withdrawn. Applicants reserve the right to pursue the subject matter of any or all of the canceled or withdrawn claims in one or more continuing applications.

Applicants note that claims 13-18 are methods of using products recited in the elected composition claims. As such, when the Examiner acknowledges the allowability of the elected claims, Applicants request that the subject matter of the method claims 13-18 be rejoined with the subject matter of the elected claims.

Claims 1, 2, 5, 12, 22, 30 and 36 are amended. Support for these amendments can be found throughout the specification and claims as originally filed. Accordingly, no new matter is added.

Rejection of Claims 2-5, 12, 22 and 27-40 under 35 U.S.C. § 112

Claims 2-5, 22, and 28-40 are rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner asserts that it cannot be determined whether Applicants intend to modify the elements of only certain or all of the genetic constructs set forth in independent claim 1.

Applicants do not agree that claims 2-5, 22 and 28-40 are indefinite; however, in order to expedite the allowance of the instant claim set, Applicants have amended dependent claims 2, 5 and 22 to clarify which constructs of claim 1 are being further limited. Applicants, however, maintain that claims 3, 4, 28 and 30-34 and 36-39 are clear as written. For example, dependent claim 28 specifically recites the genetic construct (a) of independent claim 1. Dependent claims 30 and 36 specifically recite the genetic constructs (b) and (c) of independent claim 1, respectively. Dependent claims 31-34 and 37-39 depend from dependent claims 30 and 36, respectively. In view of the foregoing remarks and amendments, Applicants respectfully submit that claims 2-5, 22, 28, 30-34, 36-39 are clear. The rejection of claims 29, 35 and 40 is obviated in view of their cancellation.

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Claim 12 is rejected under 35 U.S.C. § 112, second paragraph as allegedly being vague and indefinite. In particular, the Examiner asserts that "it is not clear whether the cells express the recited proteins after transformation, or before." Although Applicants maintain that claim is clear as previously presented, in order to expedite allowance of the currently pending claims, Applicants have amended claim 12 to recite "wherein said cells express one or more of said poison proteins or antidotes to the said one or more proteins subsequent to transformation." In view of the foregoing amendment, claim 12 is clear.

Claims 27, 29, 35, and 40 are rejected under 35 U.S.C. § 112, second paragraph as allegedly being vague and indefinite. Claims 27, 29, 35, and 40 are also rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to describe claimed subject matter in the specification in such a way as to reasonably convey to one skilled in the art that the inventor had possession of the claimed invention at the time of filing. Although Applicants disagree with both grounds of rejection, Applicants have canceled Claims 27, 29, 35, and 40 in order to expedite the allowance of the currently pending claims.

In view of the foregoing amendments and remarks, Applicants respectfully request that the Examiner withdraw the rejection of claims 2-5, 12, 22, 28, 30-34, and 36-39 under 35 U.S.C. § 112, second paragraph.

Rejection of Claims 1, 5, 8-12, 23-25, 27 and 36-40 under 35 U.S.C. § 102(e)

Claims 1, 5, 8-12, 23-25, 27, and 36-40 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by International Publication No. WO 02/066657 to Gabant et al. ("Publication"). Such a rejection requires that the claimed subject matter of the current application be described in an application for patent, published under section 122(b), by another filed in the United States before the invention date of the current application. The Publication and the current application include two common inventors, Cédric Szpirer and Philippe Gabant.

Filed herewith is a Declaration under 37 C.F.R. § 1.132 by Cédric Szpirer and Philippe Gabant which shows that the subject matter of the Publication corresponding to the rejected claims is solely the work of Cédric Szpirer and Philippe Gabant. In addition, Cédric Szpirer and Philippe Gabant declare that they are the sole inventors of the subject matter of the claims rejected by the Examiner under 35 U.S.C. § 102(e). Therefore, Applicants submit that the subject

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matter disclosed but not claimed in the Publication is attributed the common inventors of the instant application, and thus, it is not "by another" as required by law. As such, the view of the Declaration under 37 C.F.R. § 1.132, Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 5, 8-12, 23-25, 27, 36-39 under 35 U.S.C. § 102(e).

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

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### **CONCLUSION**

Applicants believe that all outstanding issues in this case have been resolved and that the present claims are in condition for allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to contact the undersigned at the telephone number provided below in order to expedite the resolution of such issues.

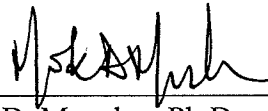
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 13, 2010

By: \_\_\_\_\_



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